

# MASSACHUSETTS PESTICIDE BOARD MEETING

## ***Minutes of the Board Meeting held at the Charles F. Hurley Building, Minihan Hall on Wednesday, December 7, 2016***

The Meeting was called to order at approximately 10:05 A.M.

### **BOARD MEMBERS IN ATTENDANCE**

John Lebeaux, MDAR Commissioner (Chair)	Present
Marc Nascarella, DPH, Designee for Commissioner Bharel, M.D.	Present
Michael Moore, DPH, Food Protection Program	Absent
Ken Simmons, DFG, Designee for Commissioner Peterson	Absent
Kathy Romero, DEP, Designee for Commissioner Suuberg	Present
Ken Gooch, DCR, Designee for Commissioner Leo Roy	Present
Richard Berman, Commercial Applicator	Present
John Looney, Public Member	Present
Brian Magee, Toxicologist	Present
Laurell Farinon, Conservation	Present
Chris Brittain, Public Member	Present
Steven Bradley, M.D., Physician	Absent
Steve Ward, Farmer	Present

The Board did meet or exceed the minimum number (7) of members present to form a quorum and conduct business.

### **OTHER INDIVIDUALS PRESENT:**

Bob Mann, MALCP; Bill Seigel, NEPMA; Ted Burgess, NEPMA; David Flynn, NEPMA; Wayne Andrews, MA Beekeepers Assoc./Pest Vex, LLC; Clifford Youne, Plymouth County Beekeepers Assoc.; Ryan Petitti, TruGreen; Richard A. Callahan, MA Bee Keepers Assoc./Worcester County Beekeepers Assoc; Taryn Lascola, MDAR; Jessica Burgess, Esq., MDAR; Hotze Wijnja, MDAR; and Steven Antunes-Kenyon, MDAR

### **DOCUMENT(S) PRESENTED**

- Minutes from the Wednesday, September 14, 2016 Pesticide Board Meeting
- Final Draft of Proposed changes to 333 CMR 13.03 Exclusions from Pesticide Applications
- Updated Pesticide Applicator Continuing Education (PACE) Forms and Instructions
  - Application for Approval of Credits
  - Training Provider Guide and Rules
  - Training Provider Instructions and Required Announcement
  - Single Session / Training Certificate
  - Multiple Session / Training Certificate

### ***A. Minutes from the Wednesday, September 14, 2016 Board Meeting***

Commissioner John Lebeaux presented the Minutes from the Wednesday, September 14, 2016 Board Meeting for the Board's consideration.

**Voted:** To accept the minutes from the Wednesday, September 14, 2016 Board Meeting.

**Moved:** Laurel Farinon

**Second:** Steve Ward

**Approved:** 10 6 0

### ***B. Pesticide Applicator Continuing Education (PACE) Program Changes and New Forms***

Taryn Lascola briefly outlined how over the past 6 months she has worked with Pesticide Program staff in collaboration with a Pesticide Applicator Continuing Education (PACE) working group to help make changes to the PACE instructions, guidance documents and forms used. The new instructions and forms will help provide greater clarity of Department expectations for workshop providers and their attendees seeking recertification / retraining credits.

The updated forms and instructions will be posted on the MDAR website by the end of December or shortly thereafter. Additional outreach will also be mailed to known workshop providers including all the new forms and instructions.

Pesticide inspectors will also work with workshop providers as they conduct audits of training sessions to help assure compliance with Department regulations, policies and expectations.

The Board and public attendees briefly discussed some of the Department's newer expectations and reviewed or clarified some of the previously existing policies.

No motions were made or actions requested.

### ***C. Vote to Approve Regulations 333 CMR 13.03: Exclusions from Applications***

Taryn Lascola outlined how public hearings for the proposed regulatory changes took place and that only one comment was received from a member of the Lakeville Board of Health (BOH). This BOH member commented in order to express concerns for balancing the public's need for protection against mosquitoes and the diseases they transmit and desire to exclude private property. These comments were not directed at any specific issues in the proposed regulations.

Jessica Burgess, Esq. explained that the Department has complied with all requirements or directives under MGL c. 30A and the Governor's Executive Order for Regulatory Review. The Department has also received approval from the Executive Office of Administration and Finance (A&F) for the current draft of the regulations before the Pesticide Board.

The last step in this process, prior to promulgation and publication by the Secretary of State, is for the Pesticide Board to vote in approval of the proposed regulations now before the Board.

Jessica explained how the Department worked closely with Massachusetts Mosquito Control Districts (MCD's) and the State Reclamation and Mosquito Control Board (SRMCB) in conjunction with input from the Massachusetts Municipal Association (MMA) to complete the proposed regulatory amendments.

She provided a detailed overview by carefully reading through the draft regulations and explaining why the changes were made or how they came about. A few of the changes Jessica explained are mentioned below:

- That feedback from the Department of Conservation and Recreation (DCR) led to the removal of the definition for Chief Forester and change from the use of the term *District Supervisor* to *Forest Health Program Director*;
- That requests for exclusions will be submitted to the Department, not the Clerk of the municipality;
- That requests for exclusion shall be transmitted by the Department to the Mosquito control project or district in which the property is located;
- That requests for exclusion may be sent via U.S. Mail or electronically in a manner prescribed by the Department;
- That requests for exclusion be received throughout the calendar year;
- That requests for exclusion would be recognized 14-days after receipt; and
- That all requests for exclusion shall expire on December 31<sup>st</sup> of the calendar year in which it was made.

Jessica also explained how the Department is working with its IT and Program personnel to develop a process for electronic submittal of exclusion requests. A web page is also being developed to explain the regulatory changes, describe the new process and provide guidance to those seeking an exclusion from such applications.

The Board discussed these proposed changes and was provided with the following clarifications or assurances:

- That the 14-day time-line for recognizing such exclusion requests was sufficient for the Department and other parties;
- That information requesting exclusions is public and may be provided to others upon request;
- That with the exception of exclusions for organic farms, exclusion requests for private property are waived in the event of a public health emergency;
- That any legal dispute between property tenants and property owners over any exclusion request must be resolved 60 apart from the Department prior to recognition of such request; and
- That the Department in conjunction with other parties will work to incorporate concerns for visibility when selecting methods to mark areas for exclusion when wide area applications are being made fixed wing or rotary wing aircraft.

**Voted:** To accept the proposed regulations as set forth

**Moved:** Jack Looney  
**Second:** Richard Berman  
**Approved:** 10 ó 0

## ***D. Pesticide Program Updates and Status Reports***

### **Advisory Councils**

As indicated to the Board in past Meetings, Taryn Lascola briefly explained that she is working with Jessica Burgess to review the pertinent language in the Pesticide Control Act and provisions in the Regulations in order to develop the appropriate strategy for starting new pesticide advisory councils. This work is being done in conjunction with input from Richard Berman who has led this effort on behalf of the pest control industry.

Taryn explained that she is working on the concept of a 5-member advisory council. This council would consist of licensed or certified pesticide applicators that have completed a Department application process. This type of process, now in development, would help the Department form the council and outline criteria and protocols for such participation on the council.

### **Pollinator Protection**

Taryn provided a brief overview of how the Department worked to complete seven (7) listening sessions and collect some 2,300 comments by email. These comments and recommendations are now compiled into one document that is posted on the MDAR website.

At this time the Department is looking to use the comments and recommendations provided to improve the draft MDAR Pollinator Protection Plan and hopes to have this completed early in Calendar Year 2017 and prior to the beginning of pollinator activity.

### **Use of Carbon Dioxide (CO<sub>2</sub>) for Rodent Control**

Taryn explained that in recent months the Department has been fielding inquiries into the use of carbon dioxide for rodent control. In some cases, the desired uses involve dry ice, while others involve tanks of CO<sub>2</sub> gas. The Department has received confirmation from the U.S. EPA that any use of CO<sub>2</sub> for rodent control must be done using products registered for such uses.

The Department was aware of at least two parties using unregistered CO<sub>2</sub> for such uses and has issued the needed cease and desist orders. The issue of such illegal uses of CO<sub>2</sub> is not unique to Massachusetts and the Department is aware that such uses have occurred in other states.

The Board inquired as to the specific reasons why U.S. EPA was taking its position against such unregistered uses of CO<sub>2</sub> and whether dry ice was not already in use by mosquito control practitioners as part of the trapping protocol.

Taryn explained that dry ice was indeed used by mosquito control as an attractant; however, that it's EPA's position that such uses are not exempt from registration. She added that there are at least two or three CO<sub>2</sub> products registered for such outdoor uses, but not for indoor use. The labeling for the registered CO<sub>2</sub> products bears the EPA signal word "WARNING" and warns of inhalation hazards. The use or handling of dry ice also requires personal protective equipment and the EPA registration process is designed to help create the language necessary establishing PPE requirements and outline all other restrictions and use directions.

## **Approval of Recreational Marijuana in Massachusetts and Potential Impacts to the Department's Pesticide Program**

Taryn explained that the approved use of recreational marijuana in Massachusetts may have an impact on the Department Pesticide Program. The Department is reaching out to the relevant State agencies in order to better understand how the Pesticide Program will carry out its mandate to regulate pesticide use on marijuana.

## **Pesticide Applicator Renewals**

Steven Antunes-Kenyon briefly stated that Pesticide Program mailed out some 8,600 renewals in the first week of October and to date has processed some 4,608 Calendar Year 2017 credentials. The Pesticide program is working hard to keep up with the renewals coming in through the Bank of America Lockbox. As usual however, this proves to be a challenge; especially this year as we work to help test and provide the needed information for the eLicensing system under development.

## **Pesticide Product Renewals**

December is the month that the Department sends out cancellation notices to those companies that have failed to ðlate renewð their pesticide products. As Pesticide Product registrations follow the State Fiscal Year, it's the Department's objective to receive renewals and related fees by July 1. Those companies that do not renew their products by the end of August are sent a late renewal warning in the first week of September. There may be some 400 products, out of more than 8,000 registered, that have yet to be renewed. The dozen or so companies or registrants responsible for these products will receive a cancellation notice indicating that these products are no longer actively registered for sale or distribution in the State.

## **Updates on eLicensing: Progress made on the Environmental Information and Public Access System (EIPAS)**

Steven Antunes-Kenyon briefly reviewed the current progress on publicly accessible data system known as the Energy / Environmental Information Public Access System or EIPAS.

As provided to the Board in September, he reiterated how EIPAS is the initiative to bring all agencies within EEA into an online permitting / authorization system. EIPAS uses a commercial off the shelf (COTS) system known as Accela. The MDAR participation represents the first program in EIPAS to conduct authorizations / licensing for the individual and is employing a new module within the EIPAS technology specifically for scheduling exams.

Steven also described how there are many notifications the Department must provide to the EIPAS development team; such that, the system user receives the correct and necessary information or feedback to confirm the status of their scheduled exam, exam results, or credential.

## ***E. Legal Updates***

### **Eversource Yearly Operational Appeal (YOP)**

Jessica Burgess updated the Board on the appeal received from four municipalities on Cape Cod challenging the Department's approval of the Yearly Operational Plan (YOP), expiring in December 2016, from Eversource Energy.

The four municipalities, represented by one attorney, are Brewster, Dennis, Eastham and Orleans and have filed a request for adjudicatory hearing. The matter was submitted to the Division of Administrative Law Appeals (DALA). The DALA Magistrate asked that the Department provide an update to the Board given that any decision made by the DALA will come before the Board for its consideration.

Both Eversource and the Department filed dispositive motions (to dismiss) for lack of standing. The Department is now waiting for the next step as the towns have until December 12<sup>th</sup> to file an appeal. At that point, the Department and Eversource will have until January 9<sup>th</sup> to file their replies.

At that point the DALA magistrate will review all appeals and replies that have been filed and work to address the procedural issues raised by the Department. Ultimately, the matter will be presented again before the pesticide Board.

Jessica also explained that there is some hesitation indicated by all parties and the DALA Magistrate on this particular YOP since it expires on December 31, 2016. While the MDAR is still in discussions with Eversource and the four municipalities to see if there is another way to address the concerns raised, it must proceed with this administrative case as ordered through DALA.

The Department will keep the Board informed as to the status of this matter.

## ***F. New Business***

Chairman John Lebeaux provided an invitation to discuss new business. Hearing none, John moved on to set the next Pesticide Board meeting date as Wednesday, March 1, 2017.

## ***G. Meeting Adjournment***

**Voted:** To adjourn Wednesday, December 7, 2016 Meeting.

**Moved:** Jack Looney  
**Second:** M. Nascarella  
**Approved:** 10 ó 0

Meeting adjourned at approximately 10:57 a.m.